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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,057	08/03/2001	Charles Arthur Risdall	38572/26217	7578
21888	7590	06/03/2004	EXAMINER	
THOMPSON COBURN, LLP ONE US BANK PLAZA SUITE 3500 ST LOUIS, MO 63101			TRAN, HANH VAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922,057

Applicant(s)

RISDALL ET AL.

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 2/24/2004.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 11, there is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble clearly indicates that a subcombination of a cap is being claimed, and the furniture being only functionally recited. The problem arises when the furniture is positively recited within the body of the claim, such as, "the threaded member engages with the tubular furniture piece". Applicant is required to clarify what the claim is intended to be drawn to, i.e., either the cap alone or the cap in combination with the furniture, and the language of the claim be consistent with the intent. For the purpose of this examination, the examiner is considering that the claim is drawn to the combination of the cap and the furniture piece. Claim 16, "the four wall sections" lacks antecedent basis, thus indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11-13, 15-16, 22-24, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 3,796,169 to Bales et al.

Bales et al discloses a cap that attaches to an open end of a tubular furniture piece comprising all the elements recited in the above listed claims including, such as shown in Fig 4, an inner wall having four inner wall sections dimensioned to be inserted into the open end of the furniture piece, an outer wall having three outer wall sections, a threaded member attached to one of the inner walls to secure the cap on the furniture piece.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bales et al.

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Bales et al discloses all the elements as discussed above including the outer wall sections do not extend over the top wall section of the inner wall. The different being that Bales does not disclose the outer wall sections do not extend over the bottom wall section instead of the top wall section. However, it would have been obvious and well within the level of one skill in the art to modify the structure of Bales such that the outer wall sections do not extend over the bottom wall section instead of the top wall section in order to easily secure the threaded member to the cap.

9. Claims 18-21, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bales et al.

Bales et al discloses a cap that attaches to an open end of a tubular furniture piece comprising all the elements recited in the above listed claims including, such as shown in Fig 4, an inner wall having four inner wall sections dimensioned to be inserted into the open end of the furniture piece, an outer wall having three outer wall sections, a threaded/glide member attached to one of the inner walls to secure the cap on the furniture piece. The different being that Bales does not clearly disclose the threaded/glide member being height adjustable for adjusting a height of the tubular furniture piece. However, it is well known in the art to provide a threaded/glide member with height adjustable capability for adjusting the height of a tubular furniture piece in order to overcome uneven floor level. Therefore, it would have been obvious to modify the structure of Bales et al by having the threaded/glide member with height adjustable capability for adjusting the height of a tubular furniture piece in order to overcome uneven floor level.

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Response to Arguments

10. Applicant's arguments with respect to claims 11-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (703) 308-6302. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT *HVT*
May 31, 2004

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Lanna Mai